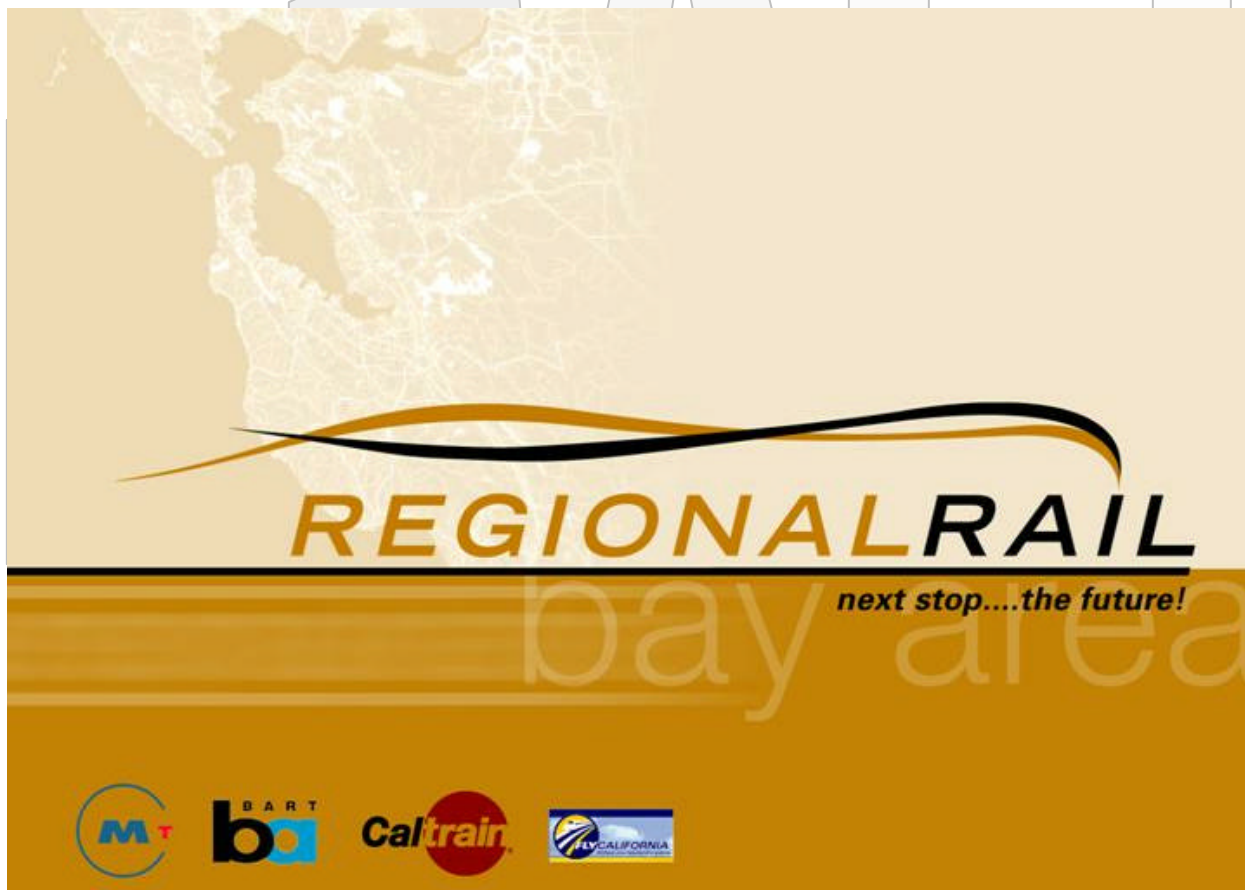


# BAY AREA REGIONAL RAIL PLAN CONCEPTUAL ALTERNATIVES TASK

## Technical Memorandum 5b Right of Way Preservation



August 27, 2007

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## **The Regional Rail Corridor Acquisition and Preservation Process**

### **1. PREMISE**

Why is acquisition or preservation of strategic corridors for regional rail improvements in the public interest?

To develop regional rail improvements, lands along the proposed regional rail improvement corridor/routes must be preserved for future rail corridor expansion and development. Other land development should be prevented in such a way that the future rail line or improvements are compromised. If outright purchase of the corridor is not available or feasible at this time, advanced planning for preservation of the corridor is a cost-effective, environmentally responsible, and efficient activity that will greatly reduce the overall cost of the project(s) to the taxpayers.

### **2. PURPOSE**

What is the purpose of a corridor acquisition and preservation plan?

To develop coordinated, achievable, and cost-effective acquisition and preservation strategies on a regional basis and to secure these opportunities through:

- Communicating the issues and advantages to local and regional area decision-makers and other interested parties
- Developing a database of existing rights-of-way and ownerships in the Regional Rail Corridor area
- Identifying an overall acquisition and preservation strategy or specific, localized corridor preservation strategies.

By fixing the location of important transportation corridors that are a major determinant of new development, corridor preservation can allow developers to adjust their development strategies accordingly and thereby encourage more orderly and appropriate development in metropolitan and rural areas. It also can provide benefit to the development community by providing more predictability in the marketplace.

### **3. GOALS**

- Preserve land for important continuous rail facilities needed to support future rail services demand.
- Minimize taxpayer cost over the long-term by avoiding costly right-of-way acquisition of future developed property.
- Support an integrated approach to land use and transportation planning.
- Provide options for corridor acquisition or preservation that can easily integrate the future design, operation, and maintenance needs of a regional rail system.
- Seek consensus on a preferred rail system plan by all affected communities and agencies through supporting adoption of consistent local comprehensive plans, zoning, and subdivision regulations.

### **4. IMMEDIATE ACQUISITION VS LONGER TERM PRESERVATION**

These goals can be realized in two general timeframes. The fastest way would be for an entity to directly acquire rights-of-way or access rights from the private property owner, the private railroad company or the public land owner (e.g., freeway corridor). A longer term process would involve acquisition of multiple parcels over time and to preserve individual corridor segments, concluding in eventual acquisition of the entire corridor.

Corridor acquisition or preservation requires completion of several steps before an action can be taken, including development of project alternatives and studies to determine the number of people and businesses that will be displaced, the estimated cost to acquire the real property for the corridor improvements, and the estimated costs to relocate those eligible and/or to move personal property from the right-of-way. Environmental studies and public involvement activities will help define the preferred corridor alignment. These are the general steps:

- Set the alignment of the corridor to be preserved, especially for critical segments where development is being proposed. Conduct enough environmental assessment and preliminary design activities to set the (plan line) centerline of the future facility from which offsets can be made to establish the preservation corridor envelope.
- Work to gain inter-jurisdictional and interagency agreement on corridor location, width, and locations of amenities for preservation purposes. Identify where local plan, policy, or map changes are needed to support the rail improvement.
- Preliminary engineering design, right-of-way plans, and environmental documentation must be completed for alignment segments where conflicting land use development is imminent. Environmental assessments of the corridor's social, economic, and environmental impacts which would be caused by construction of the various alternate alignments being considered should be completed. Preliminary cost estimates for land acquisition or preservation activities should be developed at this stage.

### **5. CORRIDOR ACQUISITION STRATEGIES**

If the opportunity were to present itself to acquire the properties needed for an entire corridor in support the regional rail network, a purchasing entity would need to be defined. If the purchaser is an existing entity, the acquisition process could be very straightforward. However, that existing organization should have, or be able to obtain, the leadership, technical experience, and the internal structure necessary to design, develop, and potentially operate the new service. Creation of a new entity for this purpose would face similar challenges; however, a new organization could have the benefit of a single focus. A joint powers rail authority could take additional time and political effort to create, but may have the advantage of being able to quickly evolve into an effective property acquisition entity.

### **6. CORRIDOR PRESERVATION STRATEGIES**

Corridor protection and preservation strategies (which may include acquisition as part of a longer term objective) are especially useful when there is no single entity capable of acquiring all necessary right-of-way at one time. The preservation process as a whole is usually much more complicated and involves many more entities or groups, depending on the length of the corridor

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segments, number, and type of property owners in the future corridor right-of-way. Once the first three steps, outlined in Section 4 are underway, the purchasing entity can act to preserve corridor land through various means outlined in the Tables 9.1 and 9.2 of this document.

### **7. CORRIDOR TYPOLOGIES**

There are generally two types of “corridors” identified in this document that help define differences in acquisition or preservation strategies. These are:

- Land or corridors in private ownership
- Land or corridors in public ownership

#### **A. Private Right-of-Way**

Preserving lands or rail corridors in private ownership presents real business and negotiation challenges. Whereas the publicly-owned lands will often require an open and deliberative public involvement process, arrangements with some private land holders can be made fairly rapidly and in a straightforward manner. Private property holders are more likely to consider a relatively straightforward business-oriented cost-benefit analysis approach. Only one set of public review and approval processes are needed on behalf of the Regional Rail entity.

#### **B. Public Right-of-Way**

Protecting or preserving lands or roads in public ownership within which the future rail corridor improvements would be located requires a deliberative public process. Implementation of the Regional Rail improvements will require public decision on distinct segments and related protection or preservation actions, often involving agreements between and with multiple jurisdictions. These jurisdictions generally must engage in their own public discussions and process regarding the protection, sale, or transfer of lands to a Regional Rail entity. Given the extent of citizen review and scrutiny, the planning-to-construction process in a “public agency to public agency” transaction can be quite lengthy. A broader range of issues will need to be discussed and resolved during this process, including potential project noise, views, open space, and agricultural land protections, and appropriate densities for nearby development.

### **8. THE CORRIDOR ACQUISITION PROCESS**

Acquisition is one of the most sensitive aspects of project development because it involves direct personal contact with the people affected by a project. A key acquisition goal is to obtain needed properties through negotiation rather than through the use of condemnation authority. This can save money and time, avoiding costly litigation. Regardless of acquisition approach, the California and U.S. Constitution and related laws/regulations require that a property owner be paid just compensation when a governmental entity acquires private property. The Federal Uniform Act requires that an “approved appraisal” be used to develop an amount the entity believes to be just compensation. The amount offered to the property owner must be at least the amount of an approved appraisal.

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Simple acquisition steps include:

- Personally contact each real property owner or the owner's designated representative in order to explain the acquisition process to the property owner, including the right to accompany the appraiser during inspection of the property.
- Provide the owner with a written offer of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.
- Give the property owner an opportunity to consider the offer.
- Conduct negotiations without any attempt to coerce the property owner into reaching an agreement.
- Provide at least 90 days written notice of the date by which the move is required.
- Pay the agreed purchase price before requiring the property owner to surrender possession of the property being acquired.

### **9. THE CORRIDOR PRESERVATION PROCESS**

Regional Rail corridor improvements will be located in varying terrain and across publicly- and privately-owned lands and facilities with different intensities of existing land use. Different combinations of these variables, in concert with dynamic real estate markets, can make the preservation of land areas along the corridor challenging. While some areas may be simply acquired, other sections along the corridor may need multiple strategies to ensure preservation.

Consideration must be given to both interim protection and long-term preservation actions. The strategies listed below are not all equally effective in preservation efforts, nor do they represent equal costs or risk. For conceptual purposes, the tables below identify actions that can serve to preserve the two land typologies using both police power and acquisition strategies in the short and longer term. Selection of specific actions must be tailored to the corridor segment selected.

Short term measures can help to hold land out of development until purchase can be made or title is otherwise transferred. These generally require minimum cash outlay, although they should be considered a prelude to ultimate acquisition. Protection measures often require considerable staff work and close coordination with local government. They are generally applied well before alignments reach definitive design stage or final environmental clearance.

Longer-term preservation measures definitively ensure that the rail rights-of-way are or will be available when needed. They can require direct cash outlays for fee simple or easement purchases. These are best used when planning and environmental reviews have reached the stage for delineating right-of-way lines with some precision, and/or when key parcels are under threat of imminent development.

**Table 9.1: Strategies for Corridors in Private Ownership**

<b>Long Term Protection and Preservation Strategies</b>	
<b>Fee Simple acquisition</b>	Where property or easements are purchased outright for just compensation. Can be used strategically to tie down key sections of the corridor right-of-way before development pressure arises. Includes hardships or protective buying, with or without Federal funds, which may be approved only after the acquiring entity has given official notice to the public that it has selected a particular location for the project alignment, or a public hearing has been held or an opportunity for a public hearing has been given. Can be combined with "land banking" and used for an interim period.



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**Table 9.1: Strategies for Corridors in Private Ownership**

Land Banking	<p>"Land banking" is the acquisition of land in advance of expanding urbanization. The price of a parcel not yet subject to urban development pressures will probably be more closely based on current rather than speculative land uses. Land banking, and holding, may therefore result in considerable savings in corridor preservation.</p>
Public/Private partnerships or Joint Development Agreements	<p>Examples of public/private partnerships actions:</p> <ul style="list-style-type: none"> <li>• Property exchanges</li> <li>• Purchase of fee interest by the purchasing entity with lease back of fee simple in short term or air rights in the future</li> <li>• Special financing in return for donations (tax exemptions, revenue bonds, tax increment bonds, mortgage backed bonds)</li> <li>• Fast-track approval of rezoning, subdivision approvals, or construction of related facilities in return for donations of the rights-of-way</li> </ul> <p>Joint acquisition projects or shared use of the right-of-way to lay parallel tracks</p> <p>Joint development/multiple use projects have been carried out for many purposes, but the basic objectives have been to achieve better compatibility between the transportation corridor and the surrounding environment, and to obtain maximum benefits from the use of increasingly scarce real estate.</p>
Special Assessment Districts that require right-of-way dedications	<p>An acquiring entity may use an assessment procedure to recapture funds expended for a public improvement, provided that the assessment is levied against all properties directly benefiting from the project.</p>
Voluntary Land Donation	<p>Property owners whose real property is needed for a project may make a gift or donation of the property, or any part of it or of any of the compensation paid for it, to the entity needing the property.</p>
Voluntary Land Dedication	<p>A property owner may, at any time during the application process for preliminary, conceptual, or final approval of a project, voluntarily dedicate lands within the project site that are in the future corridor or right-of-way.</p>
Irrevocable offers to dedicate	<p>An irrevocable offer to dedicate is a firm continuing offer of dedication of land for public purposes, which is not rejected or vitiated by an entity's failure to accept it. Usually the offer of dedication is conditioned on an assumption (by the receiving entity) of the burden of maintenance of the easement and the area to which access is provided, together with the burden of public liability on the easement.</p>
Transferable Development Rights to other properties, land swaps	<p>In a TDR program, an area to be protected from development (the sending zone) is linked with another area where development is acceptable (the receiving zone). Landowners in the sending zone are allocated a number of development credits which can be sold to the purchasing entity. In return for selling their development credits, the landowner in the sending zone agrees to place a permanent conservation easement on his or her land. Meanwhile, the purchaser of the development credits can apply them to develop at a higher density than otherwise allowed on property within the receiving zone.</p>
Development easement acquisition	<p>An easement is a legal agreement between a landowner and another entity that establishes a material interest in a property. That interest can either establish a specific limited use right, such as the right to place rail lines across the property, or restrict the future uses of the property by the landowner, such as limiting development on the property. For private property owners, this is equivalent to selling development rights.</p>
Moratoria	<p>Local jurisdictions can establish moratoria on rezoning or construction within the proposed project's limits.</p>

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**Table 9.1: Strategies for Corridors in Private Ownership**

<i>Condemnation</i>	Condemnation proceedings take place in a State or county court and are governed by State law. This means that State law will determine not only the condemnation process but also the various items for which compensation must (or may not) be paid by the acquiring agency.
<b>Short Term Protection and Preservation Strategies</b>	
Conservation or other special easements (also known as Official Maps of Reservation)	Acquisition of some interest in land less than fee simple or other right in order to preserve the property in a static condition. Examples include conservation easements, preservation easements, scenic easements, and development easements. This could also include the purchase of an "option" on a property for future fee purchase.
Option to purchase at a later date	An Option to Purchase, also known as a Lease Option or a Lease Purchase Option, grants an entity the right to purchase the rental property during the term of the lease. The entity can gain credit towards the purchase price with each on-time rental payment. With a Lease Option, the entity has the legal right to purchase the property for a fixed period of time, <u>but is not required</u> to purchase the property. With a Lease Purchase, there is a <u>definite Purchase Agreement</u> stating that the entity will buy the property for a certain price and terms by a certain date.
General Plan Corridor designations	Identify the need for corridor preservation activities for the corridors and routes by reviewing General Plans, Regional Transportation Plans, corridor studies for future transportation facilities, District System management Plans and Route Concept Reports. If a designation does not exist, a functional classification for a "Regional Transportation Corridor" could be defined and mapped for each jurisdiction where Regional Rail is anticipated to cross. The designation would help to ensure that future land use and transportation decisions respect the programmed rail project. All responsible jurisdictions along the corridor should be requested to adopt the preferred corridor plan as part of their respective General Plan update.
Corridor Protection Zoning Overlay District	The purpose of the corridor protection overlay district is to impose special development regulations on areas which have been already designated in the General Plan as future "Regional Transportation Corridors". While the general location of these corridors has been established through inclusion on the Future Transportation Map of the General plan, additional regulation of proposed development which potentially lies within or adjacent to the designated corridor may be warranted.
Zoning/Subdivision controls requiring dedications/exactions	<p>An acquiring agency may accept a parcel of land that a developer of a subdivision has dedicated or proposes to dedicate for public purposes in developing a subdivision. Some reservations of land within a proposed subdivision for public use may be required based on policies and standards of the local General Plan or applicable Specific Plan. As a condition of Tentative Map approval, a subdivider shall dedicate or make an irrevocable offer of dedication in fee simple of all land within the subdivision that is determined by the review authority to be needed for access rights; and any other necessary public and private easements. A subdivision exaction [including a subdivision dedication] is a type of subdivision regulation that requires developers to make public improvements or install public facilities (or finance them) at their own expense."</p> <p>Right-of-way acquired through normal zoning and subdivision procedures requiring the donation or dedication of strips of land in the normal exercise of police power is not considered an acquisition or taking in the constitutional sense. Thus, payment of just compensation or compliance with the provisions of the Uniform Act is not required.</p>

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**Table 9.1: Strategies for Corridors in Private Ownership**

Agricultural Zoning	Agricultural zoning is a special application of zoning and is used to protect agricultural production in a designated area and prevent the encroachment of other land uses. Agricultural zoning is often less expensive than other voluntary incentive methods for protecting agricultural lands. It is also more comprehensive and effective than programs that rely on individual owner initiative. However, like other zoning ordinances, agricultural zoning is vulnerable to change.
Density transfer within a single property	Density transfers and cluster development to provide for comparable density of development while still protecting the needed right-of-way. Local governments are often willing to transfer the density that could have been built on a developer's land within a corridor to the remaining part of the developer's land that is outside the corridor. Clustering of structures may be allowable in order to retain full development rights while siting structures, so as to avoid encroachment into the corridor. Clustering of structures may include approval to reduce setbacks between buildings within a project site, reduction of buffers within a project site, or variation of other site design requirements, but the gross density and intensity of development shall be that allowable by the underlying land use and zoning district. However, as a condition of approval of the development, such density and intensity shall be transferred to portions of the site that lie outside the corridor.
Right-of-way platting	Projects proposed adjacent to or abutting a right-of-way for which improvements are anticipated in the current General Plan or five-year Capital Improvements Program can dedicate lands within a project site which are necessary for Regional Rail right-of-way. On a subdivision, or plat map, an accurate outline of the property to be dedicated is drawn, showing areas reserved or proposed for public use, including easements,
Interim uses on right-of-way with agreement	The purpose of Interim Use Agreements is to allow certain uses for a specified period of time within portions of a site designated as future right-of-way, or within a future corridor. The allowance of uses on an interim basis allows the property owner to make economic use of the property until such time as the right-of-way is needed for facilities or improvements. As a condition of preliminary or final development order, the property owner agrees to relocate these uses elsewhere on the project site.
Tax Abatement	Tax abatements in return for preserving corridor areas.
Access management and control	Access management and control may reflect elements of both preservation and short term protection. Policies such as restricting entrancing or setting minimum spacing requirements for access are typically interim protective measures involving local or State police power. Acquisition of partial interests in property (such as denial of access along a roadway, or acquisition of right-of way for parallel tracks or access roads) is a preservation action. Another approach is to develop access management guidelines to provide local guidance for future development access to the corridor, including grade separations. As development subdivision proposals are submitted for review, all responsible jurisdictions will need to detail alignments that are compatible with the corridor rail plan.



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**Table 9.2: Additional Strategies for Corridors in Public Ownership**

<b>Longer-Term Preservation</b>	
Land donation	Where a public entity wishes to donate land or easements to the project. In some cases, this donation is made in exchange for the costs of preliminary engineering and construction for adjacent facilities that may be related to the project (such as a grade separation).
<i>Functional Replacement</i>	Sometimes the real property to be acquired for a project includes a public facility such as a school or a police or fire station, the loss of which would have an adverse impact on essential public services for the affected community. In such circumstances an alternative method of acquisition called "functional replacement" may be needed to serve the public interest. Functional replacement provides for the replacement of the public facility in question, and its use is limited to publicly owned, public use facilities.
Federal Land Transfers	Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. Sec. 5301, et seq., permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. The exception to this process is when such lands or interests therein are managed or controlled by an agency with independent transfer authority such as the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs. Transfer applications are made directly to these agencies or their land acquisition agent.

### **10. KEYS TO SUCCESS**

#### **A. Develop a Purchasing Entity**

Develop a purchasing entity with sufficient authority and experience to move ahead with right-of-way acquisition or preservation actions.

#### **B. Create an Appropriate Internal Organization**

Create an appropriate internal organization within that entity to carry out Regional Rail corridor preservation strategies. An interdisciplinary team based approach, including planners, environmental analysts, engineers, attorneys, right-of-way specialists, property managers, operations/maintenance staff, and access permit personnel is required. Since the number of segments, preservation strategies, and local jurisdictions involved in this project can be significant, Regional Rail personnel's skills in maintaining positive relationships with each other and with local jurisdictions will be at a premium.

#### **C. Gain Interagency Agreement**

Work to gain interagency agreement on the preferred corridor route. Through the use of proactive public relations, institutional networking and outreach, advisory task forces (where needed), technical assistance, and analytic studies, the Regional Rail entity should bring the message of corridor preservation to other agencies and jurisdictions with whom they will interact on the project. Of particular importance are the Federal and State resource agencies that participate in environmental review of the corridor alternatives. These agencies need to be

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engaged early in the systems planning process to assist in finding the most environmentally acceptable corridor location and support protection of these locations.

### **D. Identify Preservation Actions**

Identify preservation actions for each segment of the route and negotiate with responsible jurisdictions/agencies to secure the route. This task requires developing a detailed and user-friendly database of the prospective corridor for intra-agency use. Information developed should include land ownership, General Plan, Specific Plan, and zoning designations, present development activities, and private development plan approvals. Staff can then collaborate to determine the specific preservation actions necessary at different times (due to development pressure) and locations along the preferred route. This system can also be used by the local jurisdictions to collaborate with Regional Rail in assuring compatible future land use planning (locations and densities for transit oriented development, commerce, industry, agriculture, housing, etc.), new road establishment, and the necessity and location of grade separations.

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